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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,636	06/28/2001	Malcolm King	032942-032	5976

7590

04/18/2003

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EXAMINER

KHARE, DEVESH

ART UNIT

PAPER NUMBER

1623

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DATE MAILED: 04/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,636

Applicant(s)

KING ET AL.

Examiner

Devesh Khare

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-37 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The applicants' response and the terminal disclaimer received on 03/17/2003 have been entered. The examiner hereby vacates the Final office action dated December 23, 2002.

An action on the merits of claims 13-37, as such relate to 35 U.S.C. 112, second paragraph is set forth herein below.

35 U.S.C. 112, second paragraph rejection

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-37 are rejected under the second paragraph of 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) The phrase "number of hydrogen bonding sites" in claims 13,24 and 29 is a relative phrase, which renders the claim indefinite. The phrase "number of hydrogen bonding sites" does not define the number of hydrogen binding sites in the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

(2) Claims 13,14,16,18,19,20,22-24,26,29,32,33 and 37 are vague and indefinite as it is unclear whether the phrase "polysaccharide" is intended to be included as a dextran polysaccharide or any polysaccharide. Also, the phrase "polysaccharide" lack the

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definition for a plurality of molecular chains (of undisclosed length and composition), renders claims 13,14,16,18,19,20,22-24,26,29,32,33 and 37 indefinite.

(3) Claim 14 lack antecedent basis for the phrase "in the manufacture of a medicament to improve mucus clearance" (i.e. it has not been established that this phrase is related to a method of improving mucus clearance).

(4) The phrase "oligomers of galactose and fucose and the amino sugars glucosamine and galactosamine" in claims 15,27 and 34 is a relative phrase, which renders the claim indefinite. The phrase "oligomers of galactose and fucose and the amino sugars glucosamine and galactosamine" does not define the combination of galactose and fucose and amino sugars glucosamine and galactosamine and the type of linkages between them. The specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

(5) In claims 17 and 21, the lack of definition in the specification for the phrase "ringer solution" renders claims indefinite.

Claims 25,28,30,35 and 36 are also rejected as indefinite since they are dependent on indefinite base claims 24,26,29 and 33.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Devesh Khare whose telephone number is (703)605-

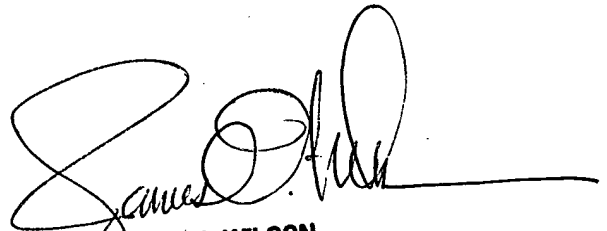
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1199. The examiner can normally be reached on Monday to Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, Supervisory Patent Examiner, Art Unit 1623 can be reached at 703-308-4624. The official fax phone numbers for the organization where this application or proceeding is assigned is (703) 308-4556 or 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Devesh Khare, Ph.D.,JD(3Y).
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April 16, 2003



JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600